



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 17, 1998

Ms. Tammy Harrison
Assistant District Attorney
Dallas County
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR98-2740

Dear Ms. Harrison:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119526.

The Dallas County District Attorney (the "district attorney") received a request for files pertaining to Linda Ferguson in cause numbers F82-83549, F82-83704, and F83-A0462Q. You indicate that the district attorney has "been unable to locate the prosecution files in cause number F83-A0462." We note that the district attorney has an obligation to make a good faith effort to locate requested records, Open Records Decision No. 561 at 8 (1990), but if the records at issue no longer exist the district attorney is not required to provide those records. Open Records Decision No. 452 at 3 (1986) (open records request applies to information in existence when request is received). Representative samples from the other two files requested were submitted to this office for review.¹

You assert that all but the basic offense and arrest report information is protected from disclosure. Basic information is the type of information that is generally included on the front page of an offense or arrest report. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). This

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

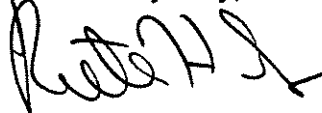
type of basic, front page information may not be withheld from disclosure under either section 552.103 or 552.108. Gov't Code § 552.108(c) (requiring release of information about arrested person, arrest, and crime); *see* Open Records Decision No. 597 at 3 (1991) (front page information may not be withheld under section 552.103(a)). As you indicate the basic front page offense and arrest report information concerning cause numbers F82-83549 and F82-83704 has been released, we will address the remaining records at issue.

You contend that the records in cause number F82-83549 may be withheld from disclosure under section 552.108(a)(2), which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You explain that while Ms. Ferguson was charged with capital murder in this cause number, that capital murder charge was dismissed. You thus assert that because the prosecution on this charge did not result in either conviction or deferred adjudication, the records concerning this particular case are protected under section 552.108(a)(2). We agree.

You contend that section 552.103(a) protects the records in cause number F82-83704 from disclosure. You explain that while this case involves Ms. Ferguson's conviction for aggravated robbery with a deadly weapon, it pertains to the capital murder conviction of Rickey Murrow. You also state that "Murrow's state writ of habeas corpus contesting his capital conviction is still pending." Based upon your representation pending and that this subject of the litigation is related to these particular records, we agree that section 552.103(a) is applicable. However, we note that information which was filed with the court in Ms. Ferguson's criminal case would generally be a matter of public record. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Also, information that Mr. Morrow previously had access to may not now be withheld from him on the basis of section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119526

Enclosures: Submitted documents

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(w/o enclosures)